IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.560/01

Mustaq Alam **Versus** State

DATE OF ORDER :: 03/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Yogesh Gupta, for petitioner
Mr. Arun Sharma, P.P.

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Instant petition has been filed against the order dated 27th September, 2000 whereby appeal preferred by appellant against the order of conviction & sentence passed by learned trial Judge u/s.457 & 380 IPC dated 11th March, 1999 for three years and fine of Rs.5,000/-, was dismissed on the ground of limitation.

It has been brought to the notice of this court that present petitioner along with Master Pal, in a criminal case instituted, were convicted by a common judgment dated 11th March, 1999. So far as appeal preferred by another accused Master Pal is concerned, he was acquitted at the appellate stage. Since the present petitioner was in judicial custody, he could not take steps immediately to file appeal which was instituted by him. Learned Appellate Authority after condoning the delay registered the appeal preferred by him and transferred the same before the Court of Additional Sessions Judge No.1. Jaipur City, Jaipur. Despite the delay being

condoned and appeal being registered, still his appeal was dismissed on the ground of limitation vide order dated 27th September, 2000 on the premise that the delay was initially condoned without hearing Public Prosecutor, as such no cognizance can be taken and since the court was not satisfied in regard to delay caused, dismissed the appeal on this ground alone.

It is true that once the delay was condoned, the another Presiding Officer was not justified in reviewing the order, even if, it was passed without hearing Public Prosecutor. But, the fact remains that he was sentenced for three years and the period, by passage of time, is also over and he has undergone the sentence. In such circumstances, no fruitful purpose is going to be served, even if, the matter is remanded back to learned appellate authority to consider and examine the same on merits.

In view of change in circumstances, this court does not find any justification to remit the case for hearing of appeal on merits.

Consequently, the misc. petition fails and is hereby dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.